

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Toya Freeman

Debtor

Chapter 13
Case No. 04-43579

OBJECTION TO CONFIRMATION OF PLAN

Secured creditor Chase Manhattan Mortgage Corporation hereby objects to the confirmation of the plan proposed by Debtors above-named on the basis that:

The time in which Debtors' pre-petition arrearages will be paid in full to Movant constitutes an unreasonable period of time pursuant to 11 U.S.C. Section 1322(b), 11 U.S.C. Section 1322(c) and 11 U.S.C. Section 1325(a) and (a)(3).

Dated: July 29, 2004

USSET & WEINGARDEN P.L.L.P

By: E/ Paul A. Weingarden/Brian H. Liebo

Paul A. Weingarden, #115356

Brian H. Liebo #277654

Attorney for Movant

4500 Park Glen Road, #310

Minneapolis, MN 55416

(952) 925-6888

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Toya Freeman

Debtor

Chapter 13
Case No. 04-43579

NOTICE OF HEARING AND MOTION TO OBJECT TO
CONFIRMATION OF PLAN AND DISMISSAL OF CHAPTER 13 CASE

TO: and Toya Freeman, and other entities specified in Local Rule 1204(a).

A. Chase Manhattan Mortgage Corporation, ("Movant"), a corporation organized and existing under the laws of the State of California, by its undersigned attorneys, moves the Court for the relief requested below and gives notice of hearing herewith.

B. The objection to confirmation of the plan will be heard at the confirmation hearing on the Debtors Chapter 13 Plan scheduled at 10:00 am on September 2, 2004, in Courtroom 7 West, 301 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415 or as soon thereafter as counsel can be heard.

C. Any response to this motion must be filed and delivered not later than 10:00 am on September 1, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than August 30, 2004, which is three days before the time set for the hearing. If there is no response to this Motion within the time provided by law, the matter may be heard as a default by the Court.

D. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rules of Bankruptcy Procedure 5005 and Local Rule 201. This proceeding is a

core proceeding. The petition commencing this Chapter 13 case was filed on June 25, 2004.

The case is now pending in this court.

E. This motion arises under 11 U.S.C. §1307(c)(5), and 11 U.S.C. §1324 and Federal Rules of Bankruptcy Procedure 1017(d), 3015(f), 9014 and Local Rules 1201-1215. Movant requests denial of confirmation of Debtors Chapter 13 Plan and dismissal of the Chapter 13 case.

F. Movant has a perfected first mortgage interest in the Debtors homestead as shown on Exhibit A and objects to confirmation of the plan proposed by the Debtors above-named on the basis that:

1. The plan does not provide for the cure of the mortgage arrearages within a reasonable period of time.

a. At the time that the present bankruptcy was filed, Debtors were delinquent on their mortgage payments to Movant from April, 2004 through June, 2004 for a total amount due of \$2,879.79 together with applicable late charges and fees pursuant to the terms of the mortgage as well as an escrow account shortage of \$3,719.93 due to Debtor's failure to carry sufficient if any homeowners insurance on the property causing a total delinquency of \$7,168.72.

b. As of the present date, the Debtors have not paid the post-petition payment. Moreover, the existing total debt of the first mortgage interest to Movant is in excess of \$153,995.71. According to Wright County tax records, the property is valued at \$126,400.00.

c. Debtors propose, in their plan, to pay \$440.00 per month to the Trustee. Based on the amount of the delinquency, and factoring in the Trustee's share, Movant

estimates that the earliest that its claim could be paid in full is 47 months from the inception of the plan.

d. The time required for the payment of Debtors' pre-petition arrearages to Movant constitutes an unreasonable period of time pursuant to 11 U.S.C. Section 1322(b)(5), and 11 U.S.C. Section 1325(a)(1) and (a)(3). See In Re Newton, 161 Bky Rptr. 207 (D. Minn. 1993).

WHEREFORE, Chase Manhattan Mortgage Corporation by its undersigned attorney, moves the Court for an Order denying confirmation of the Debtors' plan and dismissal of the Chapter 13 case.

Dated: July 29, 2004.

USSET & WEINGARDEN P.L.L.P

By: E/ Paul A. Weingarden/Brian H. Liebo

Paul A. Weingarden, #115356

Brian H. Liebo #277654

Attorney for Movant

4500 Park Glen Road, #310

Minneapolis, MN 55416

(952) 925-6888

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Darin Cathey
Toya Freeman

AFFIDAVIT OF PETITIONER

Debtors

Chapter 13, Case No. 04-43579

STATE OF CALIFORNIA)

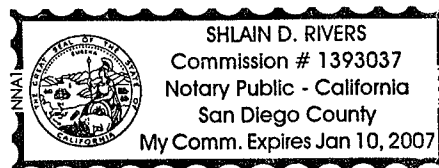
COUNTY OF SAN DIEGO)

Robin Williams, being first duly sworn, deposes and states on oath that she\he is employed by Chase Manhattan Mortgage Corporation, the movant in this action, that she\he has read the annexed Notice of Hearing and Motion to Object to Confirmation of Plan and Dismissal of Chapter 13 Case, and that it is true of her\his knowledge to the best of her\his information.

Robin Williams

Subscribed and sworn to before me this
22 day of July, 2004.

Shlain D. Rivers
Notary Public



Ag Preservation Land Fee Receipt # 142010Registration Tax Receipt # 153508 in the
amount of \$ 340.40 has been paid this
Date: 5-27 Year: 2003Douglas M. Gruber, Auditor/Treasurer
By: PG, clerk

851704

OFFICE OF COUNTY RECORDER
WRIGHT COUNTY MINNESOTA
CERTIFIED TRUE & CORRECT
AND CORRECTLY FILED

03 MAY 27 PM 4:00

\$20.00 CK # 89073
\$7.00 CK # 89081

[Space Above This Line For Recording Data]

MORTGAGE

~~Business~~
Aames Funding Corporation DBA Aames Home Loan
350 South Grand Avenue, 42nd Floor
Los Angeles, CA 90071
Attn: Collateral Control

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated May 20, 2003 together with all Riders to this document.

DOC #: 317421 APPL #: 0005355702
MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

12/31/03 - 6(MN) (0005) 01

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UM50 0005.05

Initials: PF/p.c.

MORTGAGE FORMS - (800) 521-7291

TITLE PROTECTION INC.
6001 W 80th St #255
Bloomington, MN 55437
TL117123

RETURN TO:

FAX/TRANSMITTAL

TO: Debtor

CO: _____

DEPT: _____

FAX #: _____

COMMENTS: _____

of Pages

33

FROM: Onusa

CAMPBELL ABSTRACT CO.

PHONE: (763) 682-3285

FAX # (763) 682-5810

(B) "Borrower" is Darin Cathey and Toya S. Freeman, both single

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is Aames Funding Corporation DBA Aames Home Loan

Lender is a Corporation

organized and existing under the laws of The State of California

Lender's address is 350 South Grand Avenue, 42nd Floor, Los Angeles, CA 90071

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated May 20, 2003

The Note states that Borrower owes Lender One Hundred Forty Eight Thousand and No/100

Dollars

(U.S. \$ 148,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than June 1, 2033

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input checked="" type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Other(s) [specify]

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

DOC #:317422

APPL #:0005355702

8(MN) (6665).01

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Initials DC/TF

Form 3024 1/01

851704

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the County [Type of Recording Jurisdiction]

of WRIGHT

[Name of Recording Jurisdiction]:

As per Exhibit A attached hereto and made a part hereof

LOT 4, BLOCK 3, FOREST OAKS SECOND ADDTN

Parcel ID Number: 114-254-003040
1879 Lachman Avenue Northeast
SAINT MICHAEL
("Property Address"):

which currently has the address of
[Street]
[City], Minnesota 55376 [Zip Code]

DOC #:317423

APPL #:0005355702

6(MN) (2005) D1

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Initials

DL/TF

Form 3024 1/01

851.704

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Toya Freeman

Debtor

Chapter 13
Case No. 04-43579

MEMORANDUM OF LAW

FACTS

The facts in this matter are as detailed in Movant's Motion which are incorporated herein by reference. Chase Manhattan Mortgage Corporation ("Movant") is a secured creditor of the Debtors and holds a perfected first mortgage on the Debtors' residence. Movant submits this Memorandum of Law in Support of its Motion to Object to Confirmation of Plan and Dismissal of the Chapter 13 Case.

ARGUMENT

Movant asserts that the Plan as proposed does not provide for cure within a reasonable period of time contrary to 11 U.S.C. §1322(b)(5) and cannot be confirmed pursuant to 11 U.S.C. §1325(a)(1), 1325(a)(3). In re: Newton, 167 BR. 207 (Bky D. MN 1993); In re: Brady, 86 BR. 166 (Bky D. MN 1988).

Based on the amount of the pre-petition delinquency, it will take Debtors approximately 47 months to cure. Based on the relevant factors described in the Motion, this is a patently unreasonable period of time. In Re Newton, supra.

At the confirmation hearing Movant believes the Court will deny confirmation of the Debtors' Plan. Pursuant to 11 U.S.C. §1307(c)(5) on request of a party in interest and after

notice and a hearing, the court may dismiss the case for denial of confirmation under §1325. In the present case, Movant asserts that cause for dismissal exists based upon the Debtors' inability to present a confirmable plan to the Court.

WHEREFORE, Movant respectfully requests this Court to deny confirmation of the Plan and dismiss the Chapter 13 Case, and such other and further relief as may be just and equitable in the premises.

Dated: July 29, 2004

USSET & WEINGARDEN P.L.L.P

By: E/ Paul A. Weingarden/Brian H. Liebo

Paul A. Weingarden, #115356

Brian H. Liebo #277654

Attorney for Movant

4500 Park Glen Road, #310

Minneapolis, MN 55416

(952) 925-6888

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Toya Freeman

Debtor

Chapter 13
Case No. 04-43579

ORDER

The above entitled matter came on for hearing upon motion of Chase Manhattan Mortgage Corporation pursuant to 11 U.S.C. Section 1307 on September 2, 2004, at the U.S. Bankruptcy Court, Minneapolis, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that:

1. Confirmation of the Debtors' Chapter 13 Plan is hereby denied.
2. The Chapter 13 Case herein is hereby dismissed.

Dated this __ day of _____, 2004.

Judge of the Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Toya Freeman

Debtor

Chapter 13
Case No. 04-43579

UNSWORN DECLARATION FOR PROOF OF SERVICE

Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 310, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on July 29, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Michael J. Farrell
Chapter 13 Trustee
P.O. Box 519
Barnesville, MN 56514

Robert J. Hoglund Esq.
Attorney at Law
P.O. Box 130938
Roseville, MN 55113

Toya Freeman
1879 Lachman Avenue North
Saint Michael, MN 55376

/E/Erin Kay Buss
Erin Kay Buss